

INVESTIGATION REPORT

INVESTIGATION P97-010

**Report on an investigation by
the Office of the Information and Privacy Commissioner
into a complaint regarding a disclosure of Personal information
by the Vancouver Police Department**

June 16, 1997

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EXECUTIVE SUMMARY

The Office of the Information and Privacy Commissioner (the Office) received a complaint from a woman that the Vancouver Police Department had violated her privacy by disclosing to her landlord, in response to his freedom of information request, records containing details of her 911 calls to the police for help .

The landlord requested a listing of incidents at the address of his tenant, whom he also named in his request. The Vancouver Police Department disclosed six printouts of Computer Aided Dispatch (CAD) calls, from which the complainant's name was removed. The records did, however, contain details of the incidents themselves, including numerous references to the woman's suicidal tendencies and behaviour.

After investigating the circumstances of the complaint, the Office concluded that the Vancouver Police Department had disclosed the complainant's personal information and that the disclosure constituted an unreasonable invasion of the complainant's privacy under section 22(1) of the *Freedom of Information and Protection of Privacy Act* (the Act). The Office also concluded that, under sections 23 and 24 of the Act, the Vancouver Police Department should have notified the woman that it intended to disclose records containing her personal information, in order to afford her the opportunity to request a review of that decision by the Office.

The Vancouver Police Department accepted the Office's findings and agreed to work with the Office in:

- revising its policies and procedures for the treatment of Freedom of Information requests for the personal information of named third parties to ensure the appropriate application of section 22; and
- notifying third parties under sections 23 and 24 of the Act, where it intends to disclose records that contain personal information about those third parties that might be excepted from disclosure under section 22 of the Act.

A. Introduction

The Office of the Information and Privacy Commissioner (the Office) has the authority under section 42 of the *Freedom of Information and Protection of Privacy Act* (the Act) to receive and investigate complaints that a public body has disclosed personal information in contravention of Part 3 of the Act. In November 1996, the Office received a complaint from a woman, Ms X, that, in response to a freedom of information (FOI) request, the Vancouver Police Department had disclosed her personal information to her landlord, Mr. Y, in contravention of section 22 of the Act.

The Office reviewed the complaint, the landlord's FOI request, the Vancouver Police Department's response, and the severed and unsevered records. The Office also requested the Vancouver Police Department's written rationale for disclosing the records and for general information on the Vancouver Police Department's treatment of FOI requests for records of 911 emergency calls. The Office then analyzed these items and provided its initial findings and recommendations to the Vancouver Police Department.

The Vancouver Police Department has agreed to revise its procedures and practices with respect to the release of personal information as described in this report and to work closely with this Office for that purpose.

(The sections of the Act cited in this report are reproduced in the appendix.)

B. The Complaint

The complainant, Ms X, is represented by a paralegal who wrote to the Office on her client's behalf. The main body of the complaint is cited below:

I am assisting my client in a landlord/tenant dispute in which the landlord seeks her eviction. The landlord served my office with copies of computer printouts from the Vancouver City Police (copies are enclosed for your reference), which the landlord intends to rely on at the eviction hearing. I have reviewed and discussed these documents with my client. My client is greatly concerned that such private and privileged information about her was released to the landlord by the Vancouver City Police through a Freedom of Information Request. The information released was of a personal nature and not related in anyway to the tenancy itself. The information was released without any prior contact or consent from my client. She feels the release of this information constitutes an infringement of her rights under S.22 of the FIPPA and an infringement of her rights under Section 7 of the Canadian Charter of Rights and Freedom.

The Freedom of Information and Privacy Protection Act states:

22. (1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

...

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,

(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

(a) the third party has, in writing, consented to or requested the disclosure,

The information that was released to the landlord relates to my client's medical, psychiatric or psychological history. Specifically, it records information collected through calls made to 911 for suicide assistance.

It is my position that when a person calls 911 and seeks assistance the call, and any information supplied during the conversation with a 911 operator is in the strictest confidence.

The police have released this information to the client's landlord. It is my position that the landlord has no legitimate third party interest in this information as it does not pertain to activity that threatens the landlord's property or interest in the property.

Section 19(1)(a) and (b) of the *Freedom of Information Privacy Protection Act* further states:

19. (1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

(a) threaten anyone else's safety or mental or physical health, or

(b) interfere with public safety.

It is my position that if confidential calls for help to 911 are accessible to third parties, as has happened in this instance, it will seriously undermine the public's confidence in reaching out for emergency assistance for fear of a breach of personal privacy. This alone constitutes a serious threat to "the safety, mental or physical health of an individual or interferes with public safety." There is the added personal trauma suffered by individuals, including my client when such personal information relating to "medical, psychiatric or psychological history" is made available without consideration of the party's personal privacy.

I submit that before releasing the information the Vancouver City Police had a duty pursuant to Section 22(4)(a) and 23(1)(1.2) and (2) [now 23(1), (2) and (3)] to notify my client and give her an opportunity to make representations concerning the disclosure of this information.

Yours truly,

[paralegal's signature]

C. The Landlord's Freedom of Information (FOI) Request

The landlord's FOI request was addressed to the Vancouver Police Department's information and privacy office. The text of letter is reproduced below, with personal identifiers removed:

25th September, 1996

Dear Sirs:

Re: Tenant: [Ms X]

Premises: [Ms X's apartment number and street address]

I am the landlord for the above mentioned apartment. According to the information other tenant in this building, [Ms X] always got drunk or maybe even take drugs in the above premises, Police and ambulance had come many times due to these reasons. There was an incident (your file # 96-[xxxxxxx]) happened on September 6, 1996 at 7.45 PM, Constable [Z] from District [x] - Team [x] in some reason had to break in to above premises again. As this happened quite often and had disturbed my other tenant, I do hope you can help me by listing all the incidents happened in the above premises caused by [Ms. X] so I can take further action due to her misbehavior.

If you required any further assistance, please contact me by phone no [xxx-xxxx] or my cellular [xxx-xxxx]. Thanks.

Best Regards

[X] Holdings Ltd.

[Mr Y]

D. The Vancouver Police Department's Response to the FOI Request

The Vancouver Police Department responded to the landlord's request as follows: "Please find enclosed copies of computer generated printouts of the calls to the address referred to in your request concerning the current tenant." The records consisted of computer printouts of five incident reports flowing from Ms X's 911 own calls to the Vancouver Police Department from her home: one report with the incident number cited by the landlord and four others. The Vancouver Police Department also released a sixth printout relating to an incident which took place at a hospital.

Under section 22(3)(b) of the Act, the Vancouver Police Department withheld Ms X's name and telephone number wherever they occurred on the six printouts. On the sixth report, the Vancouver Police Department also withheld details of a call from staff at the psychiatric ward at a major Vancouver hospital.

The Vancouver Police Department released the rest of the information on the six incident reports. The released details included the times and dates of the incidents, the names of the officers who attended the calls, coded references to the types of calls, the officers' actions, and other routine items.

The Vancouver Police Department also disclosed the tenant's address and other details of the incidents, including:

- "EHS en route for a possible overdose"
- "party attempted suicide"
- "37 year old female who had attempted suicide in past, can be violent and belligerent"
- several other references to the caller's suicidal tendencies, such as "female had slit her wrist and passed out ..."
- "said she was committing suicide but wouldn't say if she had taken pills"
- "section 24'd enroute to [a hospital]"
- "party can become extremely violent without warning ... may try to jump out window ... hides knives ... EHS advised as well"
- "did admit to drinking vodka"

E. The Vancouver Police Department's position on the disclosure of the information

The Vancouver Police Department's original position in this investigation was that "no personal information was released in our reply to this request." The Office requested further details on this argument and the Vancouver Police Department responded that "it remains our position that no personal information was released in this case. The information released to the applicant contains information about our attendance at the calls in question and the resolution of the calls by the attending officers."

The Office also asked for general information on the Vancouver Police Department's policies for treating FOI requests for access to computer printouts of incident reports of 911 calls by third parties. We asked if the Vancouver Police Department treated all applicants' requests for 911 records in the same way or if the landlord had received different treatment in his capacity as the landlord.

The Vancouver Police Department responded that it did not treat Mr Y's request differently from other requests for records related to third parties. It said: "Generally, any third party requesting another person's personal information in a CAD [computer-aided dispatch] printout would receive severed copies of the records indicating the fact of our attendance at a call, the substantive information about the call etc. The personal information of other people would routinely be removed, as was done in this case. The landlord's status as owner of the building did not have any bearing on our application of the legislation to the requested records"

Finally, the Office asked the Vancouver Police Department if it had considered issuing a notification to Ms X as a third party under section 23 of the Act. The Vancouver Police Department informed us that it did not consult the tenant under sections 23 and 24 of the Act, since it did not consider that it would be disclosing personal information in response to the landlord's request.

F. Did the Vancouver Police Department disclose personal information?

The Act defines personal information as "recorded information about an identifiable individual." The information on the incident reports can be linked directly to Ms X as an identifiable individual as follows (*italics ours*):

- the landlord specifically requested records about his tenant *by name*, "Ms X"; he also provided her address by apartment and street number
- in response to the request for records about calls to Ms X, the public body searched its records and retrieved six incident reports
- the Vancouver Police Department severed Ms X's name and telephone number but *released her address*, along with the other references outlined in Section D. above
- in its response letter, the Vancouver Police Department informed the landlord that it was providing access to records of calls to the address given by the landlord in his request, "*concerning the current tenant*"
- even though Ms X's name had been removed, the landlord had no difficulty linking the records he had received, and the personal information therein, directly to his tenant; as we know from the complaint letter, he also attempted to use the records in a tenancy dispute with Ms X
- Ms X had no doubt that the landlord had obtained records about her 911 calls to the Vancouver Police Department and that the information in the records pertained to her

The Office concludes that there was an obvious and direct connection between the details of the incidents, as released in the records, and Ms X, who was specifically named as the subject of the landlord's request for records. With an obvious link between the subject of the request and the information in the records, the Vancouver Police Department clearly released records containing Ms X's personal information. It now recognizes that fact.

G. Did the disclosure of Ms X's personal information constitute an unreasonable invasion of her privacy?

The landlord requested a *listing* of incidents at the tenant's address, which the Office interprets as being a request for a list of dates on which the police attended at the tenant's address. The Vancouver Police Department did not dispute this interpretation and informed the Office that no such record exists. The Vancouver Police Department stated that it aimed to assist the landlord under section 6 of the Act by providing copies of the severed computer printouts as the records which most closely matched Mr Y's request.

Such a list of incidents (if it existed) would reveal the number of times the tenant (or someone else in her apartment) had called for emergency police assistance. The Office regards a list of 911 incidents at a particular address as personal information meriting protection under the Act, since it reveals sensitive details about the number of times a caller has, in confidence, sought emergency assistance from the police.

Thus, even in response to a request for a list (other than from a person concerned in the incidents), the Office would expect a public body to protect the information under section 22(1) of the Act, stipulating that 22(3)(a) of the Act applies. Section 22(3)(b) might also apply in some circumstances, although not necessarily in this case.

Alternatively, a public body might invoke section 8(2)(b) of the Act and refuse to confirm or deny the existence of any information, other than perhaps an acknowledgment of an incident that an applicant already knew about, as in this case.

In this case, as noted above, there was no list of incidents, and it would have been a simple matter to inform the landlord that no record existed. The Office finds no justification for substituting a set of printouts containing significant amounts of sensitive personal information about the subject of the request.

The Office rejected the Vancouver Police Department's original view that providing the severed printouts constituted assistance to the landlord under section 6 of the Act. Rather, the Office concludes that the Vancouver Police Department's response was broadened inappropriately. The Office views the disclosure of the incident reports themselves to have resulted in an unreasonable invasion of Ms X's privacy. They contained sensitive medical and other personal information directly attributable to Ms X, which the Vancouver Police Department should have protected under section 22(1) of the Act.

Moreover, the Vancouver Police Department did not distinguish between requests in which the subject of the personal information is named (as is the case with Mr Y's request) and those phrased in a more general way, for example, "I request records showing the types of 911 calls the police receive." In the latter case, it might be acceptable to disclose records which included statements such as those listed in Section D. above, although any personal identifiers would still have to be severed. In a case like the present one, however, where the subject of the request is specified and the released records concern that person, such a practice is very invasive of the subject's privacy.

H. Should the Vancouver Police Department have notified Ms X under sections 23 and 24 of the Act?

The Office strongly advocates the principle that individuals should have as much control as possible over the collection and dissemination of their own personal information. The Act acknowledges this principle by incorporating a mechanism by which public bodies can take into account the views of third parties when processing FOI requests.

Sections 23 and 24 of the Act are the vehicle for this consultative process. These sections require public bodies to notify individuals and obtain their representations, where the public bodies intend to give access to a record that they have reason to believe contains information that might be exempted from disclosure under section 22 of the Act. As discussed above, however, the Vancouver Police Department did not believe that it would be disclosing Ms X's personal information and therefore did not consider notifying her under section 23 of the Act.

Our strong preference would have been for the Vancouver Police Department not to have acknowledged the existence of records related to Ms X's 911 calls (section 8(2)(b)). As Ms X's paralegal pointed out, people make 911 calls under the assumption that the information they provide will be kept in confidence. In Ms X's case, the information in the 911 calls was of a particularly sensitive psychiatric and medical nature.

At the very least, the Office considers that the Vancouver Police Department should have notified Ms X under sections 23 and 24 of the Act and given her the opportunity to make representations. She would then have been able to exercise her right as a third party to request a review by the Office of the Vancouver Police Department's decision to disclose her personal information.

I. Conclusion

As the Information and Privacy Commissioner, I have the authority to determine if a public body has correctly interpreted and applied the *Freedom of Information and Protection of Privacy Act* and to decide if the Vancouver Police Department has contravened the Act.

I conclude that by disclosing records of Ms X's 911 emergency calls, the Vancouver Police Department did not comply with the Act. As a result of the Vancouver Police Department's actions, there has been an unreasonable invasion of Ms X's privacy.

However, the Vancouver Police Department has agreed to work to prevent a recurrence of this incident by:

- revising its policies and procedures for the treatment of Freedom of Information requests for the personal information of named third parties to ensure the appropriate application of section 22; and
- notifying third parties under sections 23 and 24 of the Act, where it intends to disclose records that contain personal information about those third parties that might be excepted from disclosure under section 22 of the Act.

June 16, 1997

David H. Flaherty
Commissioner

Investigation Conducted by Celia Francis
Investigation Report Written by Celia Francis

APPENDIX 1

Duty to assist applicants

6. (1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.
- (2) Moreover, the head of a public body must create a record for an applicant if
 - (a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise, and

(b) creating the record would not unreasonably interfere with the operations of the public body.

Contents of response

8. (1) In a response under section 7, the head of the public body must tell the applicant

(a) whether or not the applicant is entitled to access to the record or to part of the record,

(b) if the applicant is entitled to access, where, when and how access will be given, and

(c) if access to the record or to part of the record is refused,

(i) the reasons for the refusal and the provision of this Act on which the refusal is based,

(ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and

(iii) that the applicant may ask for a review under section 53 or 63.

(2) Despite subsection (1)(c)(i), the head of a public body may refuse in a response to confirm or deny the existence of

(a) a record containing information described in section 15 (information harmful to law enforcement), or

(b) a record containing personal information of a third party if disclosure of the existence of the information would be an unreasonable invasion of that party's personal privacy.

Disclosure harmful to individual or public safety

19. (1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

(a) threaten anyone else's safety or mental or physical health, or

(b) interfere with public safety.

(2) The head of a public body may refuse to disclose to an applicant personal information about the applicant if the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's safety or mental or physical health.

Disclosure harmful to personal privacy

22. (1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,

(b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,

(c) the personal information is relevant to a fair determination of the applicant's rights,

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

(g) the personal information is likely to be inaccurate or unreliable, and

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,

(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,

(c) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels,

(d) the personal information relates to employment, occupational or educational history,

(e) the personal information was obtained on a tax return or gathered for the purpose of collecting a tax,

(f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,

(g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party,

(h) the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation,

(i) the personal information indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations, or

(j) the personal information consists of the third party's name, address or telephone number and is to be used for mailing lists or solicitations by telephone or other means.

(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

(a) the third party has, in writing, consented to or requested the disclosure,

(b) there are compelling circumstances affecting anyone's health or safety and notice of disclosure is mailed to the last known address of the third party,

(c) an enactment of British Columbia or Canada authorizes the disclosure,

(d) the disclosure is for a research or statistical purpose and is in accordance with section 35,

(e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff,

(f) the disclosure reveals financial and other details of a contract to supply goods or services to a public body,

(g) public access to the information is provided under the *Financial Information Act*,

(h) the information is about expenses incurred by the third party while travelling at the expense of a public body,

(i) the disclosure reveals details of a licence, permit or other similar discretionary benefit granted to the third party by a public body, not including personal information supplied in support of the application for the benefit, or

(j) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body, not including personal information that is supplied in support of the application for the benefit or is referred to in subsection (3)(c).

(5) On refusing, under this section, to disclose personal information supplied in confidence about an applicant, the head of the public body must give the applicant a summary of the information

unless the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information.

(6) The head of the public body may allow the third party to prepare the summary of personal information under subsection (5).

Notifying the third party

23. (1) If the head of a public body intends to give access to a record that the head has reason to believe contains information that might be excepted from disclosure under section 21 or 22, the head must give the third party a written notice under subsection (3).

(2) If the head of a public body does not intend to give access to a record that contains information excepted from disclosure under section 21 or 22, the head may give the third party a written notice under subsection (3).

(3) The notice must

(a) state that a request has been made by an applicant for access to a record containing information the disclosure of which may affect the interests or invade the personal privacy of the third party,

(b) describe the contents of the record, and

(c) state that, within 20 days after the notice is given, the third party may, in writing, consent to the disclosure or may make written representations to the public body explaining why the information should not be disclosed.

(4) When notice is given under subsection (1), the head of the public body must also give the applicant a notice stating that

(a) the record requested by the applicant contains information the disclosure of which may affect the interests or invade the personal privacy of a third party,

(b) the third party is being given an opportunity to make representations concerning disclosure, and

(c) a decision will be made within 30 days about whether or not to give the applicant access to the record.

Time limit and notice of decision

24. (1) Within 30 days after notice is given under section 23(1) or (2), the head of the public body must decide whether or not to give access to the record or to part of the record, but no decision may be made before the earlier of

(a) 21 days after the day notice is given, or

(b) the day a response is received from the third party.

(2) On reaching a decision under subsection (1), the head of the public body must give written notice of the decision to

(a) the applicant, and

(b) the third party.

(3) If the head of the public body decides to give access to the record or to part of the record, the notice must state that the applicant will be given access unless the third party asks for a review under section 53 or 63 within 20 days after the day notice is given under subsection (2).